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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,914	11/26/2003	Israel Raz	132076UL (12553-1020)	1899
7590 09/13/2007 Dean D. Small The Small Patent Law Group LLP Ste. 1611 611 Olive Street SAINT LOUIS, MO 63101			EXAMINER MARTINEZ, DAVID E	
			ART UNIT 2181	PAPER NUMBER
			MAIL DATE 09/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/722,914	Applicant(s) RAZ, ISRAEL	
	Examiner David E. Martinez	Art Unit 2181	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

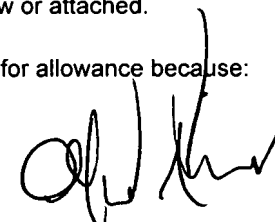
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.



ALFORD KINDRED
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: The arguments filed on 8/31/07 are not found to be persuasive.

Firstly, the conditional statement "storing the data object in a first memory if the peripheral device..." in lines 6-8 of claim 1 is an optional step. The claim only requires up to line 5 to be performed which is taught by Hoang. If the peripheral is accessible and available to accept data objects as taught by Hoang, then only a second memory is required. If the conditional statement doesn't happen then the last limitation is not performed and therefore not required, thus every limitation being anticipated by the Hoang reference. As for claim 9, due to the argued limitations in lines 8-10 of the claim being similar to the argued limitations of claim 1, it stands anticipated for the same reasons. See MPEP 2111.04.

However, assuming arguendo, the Examiner respectfully disagrees with Applicant's arguments. Shukla does describe storing a data object in a first memory if a peripheral device is not accessible (claim 1) as well as storing a data object in a first memory if a peripheral device is in an active state (claim 9).

With regards to claims 1 and 17, the issue of whether or not insufficient energy remains in a peripheral to complete a task is the same as the peripheral being inaccessible since Shukla, in fig 6 (the most preferred embodiment) and in its respective description, teaches that none of the tasks are performed due to there not being enough energy for all the tasks to be performed. That is, all the tasks are stored in non-volatile memory (a first memory). Please note that fig 6 calls for either all or none of the tasks to be performed and there is no possibility for some of the tasks to be performed thus the peripheral device being inaccessible when there is a lack of sufficient energy. Furthermore, the term "not accessible" is broad enough that it could possibly mean not having enough energy. Also, the Examiner relies on the peripheral device and volatile memory as distinct entities. Even though the volatile memory may lie within the boundaries of the peripheral device, the volatile memory by itself may be accessible when the peripheral is not accessible since the peripheral may not be able to perform its function at that time. Thus Shukla may store the data from volatile memory into the non-volatile memory when the peripheral is still not accessible.

Claims 2-8 and 18-20 remain rejected for similar reasons as claims 1 and 17 above.

With regards to claim 9, the issue of whether or not insufficient energy remains in the peripheral to complete a task is the same as the peripheral device being inactive since there may not be any tasks being performed on the peripheral device when there is insufficient energy to perform any tasks. Even though the peripheral device might include tasks in the task queue, the device may not be performing any tasks yet and the device may calculate that there is not enough energy to complete any of the tasks currently found in the task queue and therefore then store the tasks in the queue into non-volatile memory. The lack of performance of any tasks means that the peripheral is inactive, and therefore, whether or not insufficient energy remains in a peripheral to complete a task is the same as the peripheral device being inactive.

Claims 10-16 remain rejected for similar reasons as claims 9 above..